

Lewis Stein, Esq.  
NUSBAUM, STEIN, GOLDSTEIN,  
BRONSTEIN & KRON, P.A.  
20 Commerce Boulevard, Suite E  
Succasunna, NJ 07876  
nsgbk.office@verizon.net  
(973) 584-1400  
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF NEW JERSEY

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CHAYA GROSSBAUM and  
MENACHEM GROSSBAUM, her  
spouse, individually and as  
*guardians ad litem* of the  
infant ROSIE GROSSBAUM,

Plaintiffs,

CIVIL ACTION NO.  
07-CV-1359 (GEB)

vs.

GENESIS GENETICS INSTITUTE,  
LLC, of the State of Michigan,  
MARK R. HUGHES, NEW YORK  
UNIVERSITY SCHOOL OF MEDICINE  
and NEW YORK UNIVERSITY  
HOSPITALS CENTER, both  
corporations in the State of  
NEW YORK, ABC CORPS. 1-10,  
JOHN DOES 1-10,

Defendants.

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NOTICE OF MOTION  
TO ALLOW FACT DISCOVERY BARRED BY  
U.S. MAGISTRATE JUDGE ESTHER SALAS

PLAINTIFFS REQUEST ORAL ARGUMENT

Please take notice that the Plaintiffs shall move before the Honorable Garrett E. Brown, Jr., Chief Judge, United States District Court, District of New Jersey, at the United States Courthouse, 402 East State Street, Trenton, NJ on January 4, 2010 at 10:00 a.m.:

- (1) To reverse an oral order barring further fact discovery as recorded in the transcript of proceedings on September 21, 2009 (Doc. No. 30 at page 28) and a written "Letter Order" filed on November 23, 2009 and entered on November 24, 2009 (Doc. No. 33), which followed a letter by Plaintiffs dated October 13, 2009 addressed to the Court (Doc. No. 31) which was deemed a "motion for reconsideration," and found to be out of time pursuant to Local Civil Rule 7.1(i); and
- (2) For leave to serve upon Defendants, Genesis Genetics Institute, LLC, and Mark R. Hughes, the following discovery requests:
  - (a) Notice to take the oral depositions under oath of Shannon Wiltse, Matt Studt and Susan Brown, employees of Defendant Genesis Genetics Institute, LLC in Detroit, Michigan who are listed in the medical records of the Plaintiff as participating in the preimplantation genetic studies following which the Plaintiffs proceeded with *in vitro* fertilization at NYU Medical Center (hereinafter NYU) and the ultimate delivery of a cystic fibrosis baby on March 25, 2005 at St. Clare's Hospital, Denville, NJ; and
  - (b) To allow a document inspection of the records of defendant Genesis Genetics Institute, LLC to support the claim Defendant Mark R. Hughes made in his deposition taken on February 19, 2009 where he states at Page 19 that he has tested "over a thousand" babies for cystic fibrosis mutations in doing PGD testing over the time that he has been doing the work and repeats (at Page 31) "we have had four errors in 1,000 cases" (Transcript pages 19 and 31 annexed as Exhibit A). The documents sought to be inspected are the medical records with identification of patients redacted similar to the post case follow-up reports which are listed as Nos. 16 to 19 on the

Family Activity Log obtained from the Plaintiffs' records and annexed hereto as Exhibit B.

Supporting documents:

Annexed hereto in support of this Motion are:

(a) Certification of the undersigned, Lewis Stein, Attorney for the Plaintiffs; and (b) Brief.

Certification:

The undersigned certifies on behalf of the Plaintiffs that the discovery dispute contained in the within Motion was of a nature that further communication with the Defendants would not have been fruitful and therefore, was not undertaken.

Date: December 4, 2009

/s/ Lewis Stein

Signature of Attorney

Lewis Stein, Esq.

Printed name

20 Commerce Blvd., Suite E  
Succasunna, NJ 07876

Address

nsgbk.office@verizon.net

E-mail address

(973) 584-1400

Telephone number